

JAY ABBOTT,)
)
Plaintiff,)
)
vs.) Case No. 2:10-CV-0032-JCH
)
MATTHEW W. OLLER, et al.,)
)
Defendants.)

This matter is before the Court on plaintiff Jay Abbott's [register no. #177435] motion to proceed in forma pauperis on appeal [Doc. #90]. On March 17, 2011, this Court denied plaintiff's motion for Transcripts of Hearing. On March 25, 2011, plaintiff filed a notice of interlocutory appeal from this Court's denial of his request, and on April 25, 2011, plaintiff filed a motion to proceed in forma pauperis on appeal and a certified copy of his prisoner account statement. The Court granted plaintiff's motion to proceed in forma pauperis, and the instant order calculates the initial partial filing fee.

Title 28 U.S.C. 28 U.S.C. § 1915(a)(1), (2) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of indigency and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Further, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. See 28 U.S.C. § 1915(b)(1). After

payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

Discussion

A review of plaintiff's account statement indicates an average monthly deposit of \$158.67, and an average monthly account balance of \$36.74. Plaintiff has insufficient funds to pay the entire \$455.00 filing and docketing fees for an appeal at this time. Accordingly, the Court will assess an initial partial filing fee of \$31.73, which is 20 percent of plaintiff's average monthly balance.

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff shall pay an initial partial filing fee of \$31.73 towards the \$455.00 filing and docketing fees for an appeal within thirty (30) days from the date of this order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison identification number; (3) the case number; and (4) that the remittance is for the appeal of the instant action.

Dated this 27th day of April, 2011.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE